IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 21570 of 2007(P)

PETITIONER:

A. CHANDRAN,
U.D. CLERK, INTEGRATED TRIBAL DEVELOPMENT PROJECT
OFFICE, NILAMBUR, MALAPPURAM DISTRICT.

BY ADV. SRI.ANIL SIVARAMAN

RESPONDENTS:

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1. THE STATE OF KERALA,
REP. BY ITS SECRETARY, SCHEDULED TRIBES
DEVELOPMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR,
SCHEDULED TRIBES DEVELOPMENT DEPARTMENT,
THIRUVANANTHAPURAM.

3. THE PROJECT OFFICER,
INTEGRATED TRIBAL DEVELOPMENT PROJECT,
NILAMBUR, MALAPPURAM DISTRICT.

4. THE UPA LOK AYUKTA,
OFFICE OF THE KERALA LOK AYUKTA,
LEGISLATURE COMPLEX, VIKAS BHAVAN,
THIRUVANANTHAPURAM.

5. THE DIRECTOR
VIGILANCE & ANTI-CORRUPTION BUREAU,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

W.P (C) No. 21570 of 2007

Dated this the 13th day of July, 2007

J U D G M E N T

The petitioner was an Upper Division Clerk working in the Integrated Tribal Development Project, Nilambur. By Ext-P1 order he was transferred from Nilambur to Model Residential School, Idukki. The said order will show that an enquiry was held by the Vigilance into the irregularities in the construction of residential buildings for members of the scheduled tribe. The said enquiry was held based on the direction issued by the Lok Ayukta. The Vigilance suggested that the petitioner may be transferred out. Taking into account, the said view expressed by the Vigilance, Ext. P1 is issued. The petitioner submitted Ext.P2 representation against Ext.P1 before the 2nd respondent herein and thereafter approached this court. This court dismissed the writ petition by Ext.P3 judgment. The relevant portion of the judgment reads as follows:

> "I find that no ground has been made out in this writ petition to interfere with the transfer. The writ petition, therefore fails and is, accordingly dismissed. If the petitioner has a case that the allegations against him are unfounded, he will be free to invoke the appellate remedy against Ext.P1. The dismissal of this writ petition will not affect the said right of the petitioner."

2. Thereafter, the petitioner has filed Ext.P4 appeal before the Government. The petitioner has been transferred based on the report of the Lok Ayukta. So the 2nd respondent Director by Ext.P5 communication dated 20.6.2007 informed the Project Officer, Nilambur that he cannot reconsider the said transfer. So the petitioner challenges Exts.P6 communication and Ext. P9 order of Lok Ayukta directing the 2nd respondent to take action on the vigilance enquiry report. The petitioner in this writ petition seeks the following reliefs.

> "Issue a writ in the nature of certiorari, or any other such appropriate writ, order or direction call for the records leading up to Exts.P-1, P6 and P9 orders, and to quash the same;
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> Issue a writ in the nature of mandamus, or any other such appropriate writ, order or direction commanding the respondent to permit the petitioner to continue as U.D. Clerk at the ITDP office at Nilambur, as requested for by him in Ext-P2 representation, after recalling Ext.P1 order of transfer;
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> Issue any other such writ, order or direction as this Hon'ble Court may deem fit and necessary in order to meet the ends of justice on the facts and circumstances of the instant case.

2. The challenge against Ext.P1 is not maintainable in view of Ext.P3 judgment. In fact the said prayer is an abuse of

the process of court. Ext.P9 is the order of the Lok Ayukta directing the Vigilance department to hold a detailed enquiry based on the materials disclosed in the report of the Superintendent of Police attached to the Lok Ayukta. There is a further direction to the 2nd respondent Director to take action on the Vigilance enquiry report. Going by Ext.P9, it would show that the Superintendent of Police has reported that there was gross irregularity in the construction of the residential buildings and so direction was issued to the Vigilance and the 2nd respondent. I find nothing as illegal in the said direction in Ext.P9. Having regard to the facts of the case, the Lok Ayukta is fully justified in issuing the said direction. So the challenge against Ext,.P9 fails. I cannot find any illegality in Ext.P6 communication forwarding the vigilance enquiry report from the Superintendent of Police and Vigilance and Anti Corruption Bureau to the 2nd respondent by the Deputy Registrar of the Lok Ayukta. So the challenge against Exts.P1, P6 and P9 is repelled. Learned Counsel for the petitioner submits that the view expressed in Ext.P5 by the Director that the petitioner is transferred in the view of the court order will prejudice him. I

think the said contention is also unfounded. A view expressed by the Director will not bind the Government, which is the appellate authority.

In the result, the writ petition fails and it is dismissed. The dismissal of the appeal will not affect the powers of the Government to dispose of the Appeal, if any, filed by the petitioner against the transfer. If the appeal is received the Government may consider it within three months.

(K.BALAKRISHNAN NAIR, JUDGE)

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/TRUE COPY/

P.A. TO JUDGE

K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007